



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0134]

Commercial Driver's License: Tornado Bus Company (Tornado); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from the Tornado Bus Company (Tornado). Tornado requests an exemption from certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) for its drivers who currently hold a Mexican Licencia Federal de Conductor (LFC), and are seeking permanent resident status in the United States through the Department of Homeland Security and have over two years' experience driving in the United States (U.S.) and Mexico. The exemption would cover general entry-level driver training (ELDT) requirements, required knowledge testing for the commercial driver's license (CDL), required skills testing for the CDL, and requirements for knowledge and skills testing to obtain a CDL passenger endorsement. FMCSA analyzed the exemption application and public comments and determined that the application does not demonstrate that the exemption would likely ensure a level of safety equivalent to or greater than would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722. MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2020-0134” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2020-0134” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the

name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 380.609, as of February 7, 2022, entry-level driver training (ELDT) is required for individuals applying for a Commercial Driver's License (CDL) for the first time; upgrading a current CDL from Class B to Class A; or obtaining a Passenger (P), School bus (S), or Hazardous materials (H) endorsement for the first time. All drivers of commercial motor vehicles (CMVs) requiring a CDL must have the knowledge and skills specified in 49 CFR 383.111 and 383.113, respectively. An applicant for a P endorsement to a CDL must satisfy both the knowledge and skills required by 49 CFR 383.117.

Applicant's Request

Tornado requested an exemption from the following regulatory requirements: 49 CFR 380.609 (General ELDT requirements); 49 CFR 383.111 (Required knowledge); 49 CFR 383.113 (Required skills); and 49 CFR 383.117 (Requirements for passenger endorsement) for its drivers who currently hold an LFC and are seeking permanent resident status in the United States from the Department of Homeland Security. Tornado requested the exemption because it is experiencing a shortage of qualified drivers to support its operation, with adverse effects on its finances.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, Tornado emphasizes that the operation of its vehicles would not be impacted since all drivers will have over two years of experience driving buses in the U.S. and Mexico. When hired, all Tornado drivers receive training in the U.S., which includes the following topics: 1) hours of service; 2) vehicle inspections; 3) drug and alcohol; 4) safety and security; 5) Americans With Disabilities Act (ADA); 6) equipment training; and 7) Smith System Training (defensive driving classroom and operational). Tornado did not provide specific information addressing the content or rigor of the training it provides.

V. Public Comments

On July 14, 2021, FMCSA published notice of Tornado's application and requested public comments (86 FR 37209). The Agency received comments from the International Brotherhood of Teamsters (Teamsters) and two individuals. All three commenters opposed the exemption request. The Teamsters said that Tornado has not sufficiently demonstrated that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. According to the Teamsters:

Tornado states that the drivers for which they are seeking exemptions from the FMCSRs will have had over two years of experience driving in the U.S. and Mexico. But that experience is not differentiated by country. By their broad statement, it cannot be determined if a driver has more than one-day's experience driving in the U.S., and that most of the time has been spent operating in Mexico.

The Teamsters added:

Tornado offers no specifics like the number of hours of in-classroom training it offers its drivers hired in the U.S., other than stating what subjects it includes in its training. Tornado's application for exemption contains no safety analysis and it states that its operation 'is significantly affected financially' once their drivers obtain permanent residence status due to the time consumption to process their CDL. Financial considerations should never outweigh safety.

In summary, the Teamsters concluded, "these drivers who receive permanent residence status must operate in the U.S. with a U.S. CDL. They no longer can use the

Mexican LFC. Therefore, they must take the necessary steps to qualify for the U.S. CDL.”

The two individual commenters stated that the Agency should not grant exemptions based on financial considerations and that doing so would result in a weakening of the necessary training that these drivers would otherwise receive.

VI. FMCSA Safety Analysis and Decision

FMCSA evaluated the Tornado application and the public comments and is denying the exemption. In order to obtain a CDL an applicant must pass both skills and knowledge tests to demonstrate the proficiency required to safely operate a CMV on a public road. In addition, beginning February 7, 2022, the Agency’s entry-level driver training standards apply to individuals applying for a CDL for the first time; an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time.

Because the applicant did not provide any specific information on either the content or rigor of the training it provides for its drivers hired to operate in the U.S., FMCSA has no basis to conclude that granting the exemption would achieve a level of safety equivalent to, or greater than the level achieved without the exemption.

Robin Hutcheson,
Deputy Administrator.

[FR Doc. 2022-08934 Filed: 4/26/2022 8:45 am; Publication Date: 4/27/2022]